GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Order No. SWL 84 LLA 75, Bangalore, dated the 8th/9th April 1975.

S. O. 1141.—

WHEREAS, before the Presiding Officer, Industrial Tribunal, Bangalore, a complaint was made under Section 33-A of the Industrial Disputes Act 1947 (Central Act No. 14 of 1947), by Sri Chikkaramu, Venkatesh and Smt. Nagamma care of General Secretary, Bangalore General Union, Subedar Chatram Road, Bangalore-9.

AND, WHEREAS, the said Tribunal adjudicated upon the said complaint and submitted its award to the State Government as required under section 15 read with Section 33-A of the said Act.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act 1947 (Central Act No. 14 of 1947), the Government of Karnataka, hereby directs the publication of the said award in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secy. to Govt., S.W. and L. Dept.

BEFORE THE INDUSTRIAL TRIBUNAL IN KARNATAKA, BANGALORE.

Dated 24th March 1975

Present

Sri M. C. Konnur, LL.B., .. *Presiding Officer.*

Complaint No. 14 *of* 1973 *in I.D. No.* 24 *of* 1972

Complainant:

Chikkaramü, care of General Secretary, Bangalore General Labour Union, Subedar Chatram Road, Bangalore-9.

Opposite Party :

The Management of Sanyasi Brothers by its Kartha and Manager Sri K. Eswar Rao Sanyasi and Proprietress, Smt. Jaya Pai, No. 59, Sunkalpet, Bangalore-2.

Complaint No. 15 *of* 1973 *in I.D. No.* 24 *of* 1972

Complainant :

Venkatesh, care of General Secretary, Bangalore General Labour Union, Subedar Chatram Road, Bangalore-9.

Opposite Party :

The Management of Sanyasi Brothers by its Kartha and Manager Sri K. Eswar Rao Sanyasi and Proprietress, Smt. Jaya Pai, No. 59, Sunkalpet, Bangalore-2.

Complaint No. 16 *of* 1973 *in I.D. No.* 24 *of* 1972

Complainant :

Smt. Nagamma.

Opposite Party :

The Management of Sanyasi Brothers by its Kartha and Manager Sri K. Eswar Rao Sanyasi and Proprietress, Smt. Jaya Pai, No. 59, Sunkalpet, Bangalore-2.

Appearances:

For the Complainants.—

Sri Alampalli Venkataram, General Secretary, Bangalore General Labour Union, Subedar Chatram Road, Bangalore 9.

For the Opposite Party.—

Sri K. Eswar Rao Sanyasi, Manager, Sanyasi Brothers, Bangalore.

AWARD

These complaints are separately filed by the complainants under Section 33-A of the Industrial Disputes Act, 1947, praying for reinstatement of the complainants with continuity of service and backwages and all other consequetial benefits.

2. The facts alleged in these 3 complaints are as under:—

On 26th April 1972, a Memorandum of Settlement was entered into between the General Secretary, Bangalore General Labour Union, representing the complainants in these three cases and the Management of the Opposite Party by its Manager, Sri K. Eswar Rao Sanyasi in the course of conciliation proceedings under Section 12(3) of the Industrial Disputes Act. The Memorandum of Settlement in its entirety is incorporated in all these complaints. It is seen that in the previous conciliation proceedings held on 3rd June 1971 an amicable settlement had been arrived at, but since that settlement was not implemented by the Management of the Opposite Party, the General Secretary of the Union had made a complaint to the Commissioner of Labour for non-implementation of the settlement, and prayed for proper action against the management. This was referred to the Labour and Conciliation Officer again for negotiations to get the said settlement implemented as a result of which the settlement, dated 26th April 1972 was arrived at between the

parties whereby the management agreed to implement the settlement, dated 3rd June 1971 and the workers *viz.*, the Complainants in question were to report for duty at the premises of the factory of the Management on 27th April 1972 in the presence of the Labour Inspector and Sri Alampalli Venkataram, the General Secretary of the Union. The Government had in the meanwhile referred the dispute between the complainants and the Management for adjudication to this Tribunal by its order, dated 4th August 1972 on the point as to whether the Opposite Party-Management was justified in refusing to pay the full back wages and the benefits of the continuity of service to these workers with effect from dates stated therein as this issue was not agreed to between the parties in the settlement of 3rd June 1971. This dispute was still pending in I.D. No. 24 of 1972 on the file of this Tribunal. Although the complainants were working properly and diligently, the Opposite Party illegally and unjustly terminated the services of these complainants by serving a copy of the intimation addressed to the Labour Officer stating that the services of the complainants were terminated with effect from 10th January 1973. Thus the terminations were effected during the pendency of the dispute on the file of this Tribunal without even serving any notices or giving any opportunity to the complainants and without holding any enquiry. Thus the terminations of the complainants' services were in contravention of Section 33 and the mandatory provisions of Section 33(2)(*b*) were not followed. Several letters addressed by the complainants requesting the management not to contravene Section 33 and to reinstate them were of no avail. Hence the complainants prayed for their reinstatement with all consequential benefits.

3. The contentions taken by the Opposite Party in its objection statement in all these complaints are as under:—

The Opposite Party Management is a manufacturer in Art Silk sarees and woven labels, employing about 20

to 25 workers. It is also stated that the complainants in all these cases were not working properly since their appointments from 27th April 1972, that they were working at their whims and fancies by absenting themselves without giving any notice and that they had thus put the Opposite Party to unnecessary loss. The Opposite Party became disgusted with the behaviour and attitude of the complainants towards their work. The stand taken by the Management is that these complainants were reinstated as per the terms of the settlement dated 26th April 1972, that it was agreed between the Commissioner of Labour and the Conciliation Officer, the complainants and the Opposite Party that the workers would work for a period of six months from the date of their appointment from 27th April 1972 and then a notice should be issued to the Labour and Conciliation Officer, copy of the same being posted to the complainants for employment for a further period of two months and thereafter, the complainants would leave their service of their own accord on 10th January 1973 after the expiry of the two months notice. It is stated that a copy of the notice dated 3rd November 1972 was sent to the complainants undtr Section 19(1) of the Industrial Disputes Act for necessary relief from the Labour and Conciliation Officer. No reply was received from the Labour and Conciliation Officer, to the letter addressed to him on 3rd November 1972 as the Conciliation Officer and the Complainants had already committed themselves for leaving the services of their own accord and the matter was closed by the Conciliation Officer without taking any further action after he had received the letter and the complaints also did not ask for conciliation proceedings as they had committed themselves to quit their services after issue of notice as per terms of settlement of 26th April 1972. The Opposite Party submitted that there was no violation or disregard of the provisions of the Industrial Disputes Act as the Opposite Party had strictly in accordance with the terms of the settlement dated 26th April 1972. Further the Opposite Party submitted that

the I.D. No. 24 of 1972 relates only to payment of back-wages and continuity of service to the complaints in question and that it is not connected with the Memorandum of settlement dated 26th April 1972.

4. The Management filed additional objections in which it was stated that, though the Opposite Party had contravened Section 33 of the Industrial Disputes Act, by not giving one month's notice pay, the Management obeyed in full satisfaction of the settlement by giving two months notice instead of one month as contemplated by Section 33 and thus the complaints had been benefitted as they had taken advantage of the settlement which was fair and more beneficial than the provisions of Section 33 of the Industrial Disputes Act and the Tribunal had no jurisdiction to entertain the complaints as it purely a matter of settlement between the parties before the Conciliation Officer.

5. The Issues framed in all these three complaints are common and they are :—

I. Whether the services of the complainants were terminated by the Opposite Party in pursuance of the terms of settlement as contended ?

II. Whether the Opposite Party is justified in terminating the services of the complainants for the reasons stated by the Opposite Party in its objection statement and whether it was not in violation of the provisions of Section 33 of the Industrial Disputes Act ?

III. To what reliefs, if any, are the parties entitled ?

6. Since the Issues involved in these three complaints are common and common evidence and documents are relied upon by consent, the three complaints are clubbed together for disposal by a common order.

7. On behalf of the complainants, the three complainants are examined and Sri A. Venkatram who is representing the complainant in these cases as the General Secre-

tary of the Bangalore General Labour Union of which the complainants are the Members has examined himself on behalf of the complainants. The complainants are illiterates except that the complainants in Complaint Nos. 15 of 1973 and 16 of 1973 know only how to sign their names. Sri A. Venkatram referred to the earlier settlements arrived at between the parties and also referred to the letters addressed by him on behalf of the complainants to the Management. The relevant settlement on the terms of which the reliance has been placed by the Opposite Party for terminating the services of the complainants in Ext. 3-A marked in I.D. No. 24 of 1972 and this settlement as stated above is incorporated in tht complaints by the complainants. The other settlement on which the settlement in question was based is the settlement dated 3rd June 1971 which is marked as Ext. 4(c) in I.D. No. 24 of 1972. These settlements are not disputed by the Opposite Party and Sri A. Venkatram has referred to them and proved them. The settlement Ext. 4(c), dated 3rd June 1971 would show that the Opposite Party had agreed to reinstate these complainants and the question of paying backwages with continuity of service was left open for being decided later, but as no agreement was reached on this point between the parties, this Issue was referred to this Tribunal which was pending in I.D. No. 24 of 1972 when the Opposite Party purported to terminate the services of the complainants as in accordance with the terms of the settlement Ext. 3(a), dated 26th April 1972. The settlement Ext. 3(a), dated 26th April 1972 was necessitated since the Opposite Party failed to implement the settlement as per Ext. 4(c), dated 3rd June 1971 and when the complaint was made by Sri A. Venkataram to the Commissioner of Labour for taking action against the management for not implementing the settlement dated 3rd June 1971 and when the management came in threat of prosecution for not implementing the settlement, dated 3rd June 1971, the Management yeilded and came to a settlement as per the terms of Agreement of Ext. 3(a), dated 26th April 1972.

8. Thus on its own showing, the management must either stand or fall by the settlement Ext. 3(a), dated 26th April 1972 since the management has entirely relied on this settltment dated 26th April 1972 as enabling it to terminate the services of the complainants in the manner it has done. The plain reading of the settlement Ext. 3(a), dated 26th April 1972 would show that there is nothing in the settlement which would lend support to the contention of the management for its terminating the services of these complaints as in accordance with the terms of this settlement. There are no such terms incorporated in this settlement dated 26th April 1972 which would enable the management to take any such plea or contention to justify the termination of the services of the complainant as in accordance with the terms of this settlement. All that the settlement states is that the workers *viz.*, the complainants in question would report themselves for duty on 27th April 1972 at 11-00 A.M. in the presence of the Labour Inspector and Sri A. Venkataram, General Secretary of the Union at the premises of the factory and the management had agreed to reinstate the said three workers. Beyond this, the agreement does not suggest that the management would employ them for a period of six months from 26th April 1972 or that the workers would voluntarily abandon the services of their own accord after two months notice after the completion of the period of six months from their reinstatement on 27th April 1972.

9. It is admitted that the management did not issue any direct notice to the complainants terminating their services. The Management simply addressed the letters dated 11th November 1972 and endorsed copies of the letters to these complainants. The evidence of Sri A. Venkatram show that the management did not care to reply to the letters of the complainant. The Management did not choose to adduce any evidence except relying upon the documents produced in the I.D. No. 24 of 1972. It is admitttd that the management terminated the services of these complainants but the stand taken is that the

services were terminated in accordance with the terms of the settlement dated 26th April 1972, whereby it was agreed between the parties and the Conciliation Officer that the workers would work for a period of 6 months from the date of reinstatement from 27th April 1972 and that the complainants would leave the services of their own accord on 10th January 1973 after the expiry of two months' notice. Evidently no such terms can be found in the settlement dated 26th April 1972 and obviously the Opposite Party had no alternative to leave the matter at that in the objection statement itself without venturing to lead any oral evidence and that for obvious reason, Sri K. Eswar Rao Sanyasi, who represented the Opposite Party and conducted these proceedings, did not choose to enter the witness box to support the stand taken by him.

10. Sri Eswar Rao Sanyasi remained satisfied by putting a few suggestions in the cross examination of the witnesses examined on behalf of the complainants. He suggested to Sri A. Venkatram that the Complaints filed are fabricated or outside the scope of Section 33-A of the Industrial Disputes Act. He suggested that he was giving false evidence in order to invoke the sympathy of the Tribunal. He further suggested that the copies of the letters produced by him along with the Acknowledgements of the Opposite Party are not connected with the acknowledgements and that the copies produced are false and fabricated and have nothing to do with the letters acknowledged by the Opposite Party. All these suggestions are obviously denied and they merit no consideration. If the copies produced are nothing to do with the letters acknowledged by the Opposite Party, the best way was to produce the originals and the suggestions made only show the desperate manner in which they are made without regard for truth. It would advance in no way the stand taken by the Opposite Party. The suggestions then made to the complainants in their cross examination are also significant in that it has been consistently suggested to them that they were removed from service after their reinstatement for the reason that they were

irregular in their attendance that they were not doing the work properly or idling away their time or were remaining absent at their will and pleasure and without leave or permission. These suggestions are of course denied by the complainants. If the suggestions are taken for their own worth, it would simply mean that the Opposite Party had terminated the services of the complainants apparently for their misconduct. It must follow, therefore, that the management was required to take action against the complainants after complying with the mandatory provision under Section 33 of the Industrial Disputes Act before their services could be terminated. Admittedly no notices were given to the complainants calling upon them to explain their misconduct. No enquiry was held after framing any charges against them and no opportunity was given to them before terminating their services.

11. The stand taken by the management appears to be that the management had not violated the provisions of Section 33 of the Industrial Disputes Act in as much as they had terminated the services of the complainants in accordance with terms of the settlement dated 28th April 1972. I have already pointed out above that such a stand is not borne out by the terms of the settlement relied upon by the Opposite Party for this purpose. Several letters were addressed on behalf the complainants by Sri A. Venkatram but they are of no avail in spite of bringing to the notice of the Management that their action was contrary to the provisions of Section 33 of the Industrial Disputes Act and that the stand taken by the management in their letter dated 3rd November 1972 that the complainant, services were terminated in accordance with the settlement dated 26th April 1972 was all imaginary. Reference may be made to the letters Ext. C. 14 and C. 15 addressed to the Opposite Party by Sri A. Venkatram on behalf of these complainants bringing out the hollowness of the stand taken by the Management in terminating the services of these complainants as in accordance with the terms of settlement, dated 26th April 1972 and I need not repeat the observations made in Ext. C-14 and C-15. The

Management appears to be labouring under misconception of the provisions of law by stating that the two months' notice, instead of one month's notice, was more to the advantage of the complainants. The stand of the management, that the complainants should work for six months from the date of reinstatement and that they should quit the services after two months after the expiry of six months' period appears to have been adopted by reference to Section 19(2) of the Industrial Disputes Act. It is true that under Section 19(2) of the Industrial Disputes Act, the settlement would be binding for such period as is agreed upon by the parties and if no such period is agreed upon, for a period of six months from the date on which the Memorandum of Settlement is signed by the parties and shall continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from the date on which the notice in writing of intention to terminate the settlement is given by one of the parties to the other party to the settlement. The invoking of Section 19(2) by the Management in these cases is out of place although the management has adopted the language of Section 19(2) in its objection statement in support of its action. In the first instance, the management has not terminated the settlement as such as contemplated by Section 19(2) of the Act. On the contrary, the stand of the management is that it has taken the action against the complainants as in accordance with the terms of the settlement itself. Thus the question of terminating the settlement did not arise in this case on the admission of the Opposite Party itself.

12. Admittedly, the dispute between the very parties was pending in I.D. No. 24 of 1972 on the file of this Tribunal when the Opposite Party terminated the services of the complainants. A vague contention was taken that the issue pending in I.D. No. 24 of 1972 had no connection with the termination of the services of the complainants as it was done in accordance with the terms of the settlement, dated 26th April 1972. Once it is held that the termination

was not in accordance with the terms of the settlement, dated 26th April 1972, this contention falls to the ground. Consequently, since the complainants are dismissed from their services, it does come within the purview of Section 33(2)(b) of the act and the dismissals of the complainants by the Opposite Party is clearly in violation of the mandatory provisions of Section 33 of the Act.

13. In the result, the complaints must succeed and the order for their reinstatement must follow. Normally they have to be reinstated with full back wages but no evidence has been adduced as to whether the complainants had no opportunity to secure alternative gainful employment during all this period and in the absence of such evidence, I think it is fair to allow reinstatement with only half back wages.

14. The complaints 14 of 1973, 15/73 and 16 of 1973 are allowed. The complainants in 14 of 1973, 15 of 1973 and 16 of 1973 are ordered to be reinstated with half back wages and continuity of service. No order as to costs.

(Dictated to the stenographer, transcribed by him and corrected by me).

M. C. KONNUR,
Presiding Officer,
Industrial Tribunal, Bangalore.